IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1680 OF 1994

Vinayak S. Jadhav & Ors. ..Petitioners.

Vs.

Ld.Chief Metropolitan
Magistrate & Anr. ..Respondents.

Mr.I.P.Bagaria, Advocate for the Petitioners.

Mr.P.M.Mokashi, A.G.P. for the Respondents.

CORAM: S.RADHAKRISHNAN AND
S.J.VAZIFDAR, JJ.

DATED: 7TH SEPTEMBER, 2004

ORAL JUDGMENT : (Per S.Radhakrishnan, J.)

By this Petition, the Petitioners who are working as Chaprasis with the learned Metropolitan Magistrates in the City of Mumbai have challenged the termination orders with effect from 15th July, 1994 in respect of Petitioner Nos.1 to 3, in respect of Petitioner No.4 with effect from 12th August, 1994, and Petitioner No.5 with effect from 8th June, 1994.

2. The brief contentions of the Petitioners are that there are 43 Metropolitan Magistrate Courts in

the City of Mumbai and each Metropolitan Magistrate is provided with one Chaprasi to perform the duty at the residences of the Metropolitan Magistrates and to do all the household work of the concerned learned Metropolitan Magistrate and the said appointments of the Chaprasis were made directly by the learned Chief Metropolitan Magistrate from the applications received from the concerned candidates. It appears that originally 17 persons were appointed as Chaprasis by the learned Chief Metropolitan Magistrate. The Petitioner No.1 was appointed as a Peon with effect from 15th January, 1990 in the Esplanade Court and Petitioner No.2 was appointed as Chaprasi at the residence of the learned Metropolitan Magistrate Shri S.B.Patil from 15th January, 1990. However, though the Petitioner No.1 was appointed as Peon, he was assigned the work of Chaprasi. Both Chaprasi and the Peon have same basic pay scale. Petitioner Nos.3 to 5 were appointed as Peons and they were asked to do the work of Chaprasis at the residences with regard to various learned Metropolitan Magistrates. Right from the year 1990 till 1994 the Petitioners were continuously doing the household work on every day at the respective residence of the learned Metropolitan Magistrates.

3. Another important aspect to be noted is that though the Petitioners were shown as temporary employees, they were paid their salary alongwith the other employees at the beginning of the month and for office purpose an order of break in service and re-appointment in service were shown in the records. In reality, there was no break in service. The order shows that only for the record purpose they used to provide two days break and the re-appointment. The same is apparent from Exhibit "F" to the Petition being order dated 6th January, 1994.

4. On 13th December, 1993 eight persons who were similarly situated as that of the Petitioners, who were also temporary and were continued from time to time after giving an artificial break in service, were all made permanent. The Petitioners were given the benefits viz. increments, leave, bonus and interim reliefs as afforded to the permanent employees.

5. Respondent No.1 had issued a letter dated 24/25th June, 1994 whereby the services of the Petitioners were sought to be terminated with effect

from July and August, 1994. Therefore, the Petitioners have filed this Petition. A Division Bench of this Court by an order dated 1.8.1994, had directed that if the Petitioners were still in service, they may not be removed from service and if any of them was already removed in the meantime, such persons may be paid salary last drawn by them until further orders.

6. Subsequently, on 7.2.1997 in a similar Writ Petition being Writ Petition No.1779 of 1994 a Division Bench of this Court granted an interim order whereby the Petitioner therein should be afforded all the benefits of increment, leave, bonus and interim reliefs as are available to the permanent employees.

7. Based on the same, the Petitioners had also taken out a Notice of Motion being Notice of Motion No.100 of 1997 wherein similar reliefs were granted to the Petitioners and the Petitioners were also directed to be granted all the service benefits which were available to the permanent employees.

8. The learned counsel for the Petitioners pointed out that right from the year 1990 till date

the Petitioners are working as Chaprasis at the residences of various learned Metropolitan Magistrates without any break whatsoever. He also emphasized that the only ground on which the Respondents are seeking to terminate the services was on the ground that the Petitioners were appointed on a temporary basis by way of a stop-gap arrangement until the vacancies are filled-in through the candidates sponsored by Employment Exchange.

9. The learned counsel for the Petitioners strongly placed reliance upon a judgment in **Rabinarayan Mohapatra v. State of Orissa & Ors. : (1991) 2 Supreme Court Cases, 599** wherein the Supreme Court referring to its earlier judgment in **Rattan Lal v. State of Haryana** has categorically held that such temporary appointments are totally arbitrary and illegal and service of such temporary employees are to be regularised. In that behalf, paragraph 5 may be relevant which reads as under :

> "5. We have heard Mrs.Uma Mehta Jain, learned counsel for the appellant. This Court in Rattan Lal v. State of Haryana speaking through Venkataramaiah, J. (as the learned Judge then was) observed as under: (SCC pp.

44-45, paras 1 and 3)

"The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the education institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation

> cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer....
>
> We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules."

Therefore, the learned counsel for the Petitioners contended that the Petitioners who are otherwise qualified and have been working as Chaprasis since 1990 for all these years without any break and the break was shown only for record purpose but there was no real break at all, the services of these employees ought to be continued and that they should be treated as permanent employees.

10. The learned A.G.P. for the Respondents pointed out that the only ground on which they were denied regularisation was that the Petitioners were not

sponsored through the Employment Exchange and that they were directly appointed. The learned A.G.P. also fairly states that as of today they do not have any persons sponsored from the Employment Exchange for the purpose of employment as Chaprasis. The learned A.G.P. however is unable to explain as to on what basis eight employees were regularised and made permanent as mentioned hereinabove.

11. Under the aforesaid facts and circumstances, as the Petitioners have been continued from 1990 till date as Chaprasis without any break whatsoever and also in view of the judgments of the Supreme Court in **Rabinarayan Mohapatra v. State of Orissa & Ors.** and **Rattan lal v. State of Haryana** as claimed in paragraph 5, we find that the Petitioners are entitled to be treated as permanent employees and are entitled to all the benefits which the permanent employees are entitled to.

12. Rule is accordingly made absolute.

13. Issuance of certified copy is expedited.

(S. Radhakrishnan, J.)

(S.J. Vazifdar, J.)

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DATED: 7TH SEPTEMBER, 2004

P.C. :

For the reasons separately recorded n the oral judgment, the Court has passed the following order :